

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:04CV11

**GERALD D. PAYNE; DENNY
CHARLES PEARCE; and MAURICE
ANTHONY LASHER,**

Plaintiffs,

Vs.

**STEVEN A. WARD; SAMUEL G.
FERRELL; RAY CHASTEN; HERMAN
W. McEWAN; LIONEL KOON;
TANTAMOUNT, L.L.C.; PARKLAND
TRUST B.T.; JAMES R. KELLER; and
ADVENTUROUS LIVING, INC.,**

Defendants.

ORDER

THIS MATTER is before the Court on the Plaintiffs' motion for default judgment against Defendant McEwan. The motion is denied.

On February 7, 2004, McEwan filed an answer to the amended complaint in this action. On March 24, 2005, Plaintiffs moved for entry of default against McEwan on the ground that McEwan, who had been incarcerated in a federal correctional facility, failed to participate in a pretrial conference and to notify the Court of his new address. At some undisclosed point in time, McEwan was released from prison and deported to Jamaica. On May 20, 2005, the Magistrate Judge recommended denial of the Plaintiffs' motion for default judgment against McEwan and the Plaintiffs did not file any objection to the recommendation. As a result, on June 10, 2005, the undersigned adopted the recommendation.

Plaintiffs now renew the motion asserting the same grounds as previously raised. The Court will not change its previous ruling. Plaintiffs may, however, take a voluntary dismissal against McEwan. ***See Plaintiffs’ Motion to Permit filing of Motion for Default Judgment, filed August 16, 2005 (“[P]laintiffs have reached a settlement agreement with one of the non-defaulting defendants[.] If the Court permits the filing of the motion for default judgment against the defaulting defendants [Ward, Chasten, Tantamount, L.L.C., Parkland Trust, Keller, and Adventurous Living] and grants said motion, it is the intention of the undersigned counsel for the plaintiffs to seek dismissal as to the remaining two defendants[.]”)***

IT IS, THEREFORE, ORDERED that the Plaintiffs’ motion for default judgment against Defendant McEwan is hereby **DENIED**.

Signed: September 9, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

